IN THE HIGH COURT OF UTTARANCHAL AT NAINIAL

WRIT PETITION NO.540 (MS) OF 2006

Sitapur Eye Hospital Sitapur,
Situated at Srinagar, Garhwal, through its Secretary,
Dr. M.K. Mehta. .....Petitioner.

Vs.

1. Commissioner, Garhwal Division, Paurigarhwal,
2. District Magistrate, Paurigarhwal,
3. Mahant Ashutoshpuri, S/o Govindpuri, R/o Srinagar, Garhwal. .....Respondents.

Dated: 10.05.2006

Hon'ble Rajesh Tandon, J.

Heard Sri K.N. Joshi, Advocate for the petitioner and Standing Counsel for the respondents no. 1 and 2. Both the parties have agreed that let the matter be finally disposed of at the admission stage.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the impugned order dated 05.03.2006 (Annexure 12 to the writ petition) passed by the Commission Garhwal Division, Pauri in Revenue Revision No. 4 of 2005-06 Mahant Ashutosh Puri Vs. Sitapur Eye Hospital and the order dated 13.03.2006 (Annexure No. 8 to this writ petition) passed by the District Magistrate, Paurigarhwal restraining the petitioner from selling the property.

Briefly stated, according to the case of the petitioner, the proceedings under section 34 of the Land Revenue Act were finalized on 08.08.2001. The operative portion is quoted below:-

''अतः ग्राम पुराना श्रीनगर पट्टी–कटूलस्यूस्त्रतहसील गढ़वाल के हाल ख0 खा0 न0 20 में विक्रेता कमलेप्रवर मंदिर श्रीनगर गढ़वाल के हक से 74, 7/16 िं.493 हे0क्र भूमि खरिज होकर

क्रेता नेत्र चिकित्सालय सीतापुर टेस्ट सीतापुर उ0प्र0 के नाम अंकित हो मामले में 10–00 रू0 अर्थदण्ड क्रेता से वसलू होकर जमा खजाने हो बाद वसूली अर्थदण्ड तद्नुसार भू.अभिलेखों में संप्रोधन होकर पत्रावली नियमानुसार अभिलेखागार संचित हो ।''

Petitioner has submitted that the District Magistrate has passed the order on 13.03.2006 in the administrative side by which he has stayed the order dated 08.08.2001.

A perusal of the order passed by the Tehsildar dated 08.08.2001 shows that this was an order in proceedings U/s 34 of the Land Revenue Act and thereafter, the District Magistrate has passed the order in administrative capacity by staying the same alienation. The order passed by the Tehsildar has been stayed on 13.03.2006 by the District Magistrate.

Against the order dated 08.08.2001, a revision was preferred before the Commissioner in 2006 without filing the application under Section 5 of the Limitation Act. If the revision has been filed beyond time, the Commissioner shall dispose of the application under Section 5 of the Limitation Act. It is well settled that jurisdiction to entertain the revision depends upon the filing the revision within the statutory period of limitation.

In view of the aforesaid, the Commissioner is directed to decide the revision after hearing both the parities.

However, meanwhile the order dated 5th March, 2006 passed by the Commissioner as well as the order passed by the District Magistrate dated 13.03.2006, shall remain stayed.

Writ petition is disposed of. No order as to costs.

10.05.2006 (Rajesh Tandon, J.)
Rathour